



# The hearing – guidance for claimants and respondent

## Introduction

This booklet explains the different types of Employment Tribunal hearings, how to prepare for them, what happens at them and afterwards.

Please contact a tribunal office or the Employment Tribunals Public Enquiry Line: England and Wales: **0300 123 1024**; Scotland: **0141 354 8574**

Textphone: **+44 (0)1509 221564** if you would like a copy of this booklet in Braille or large print.

### Presidential Guidance

Under the Employment Tribunal Rules the Presidents of the Employment Tribunals in England and Wales and Scotland may issue Presidential Guidance. The aim of that guidance is to improve consistency in the way Employment Tribunals manage cases and enable the parties to better understand what is expected of them and what to expect. It is not binding but should be followed where possible.

The Presidential guidance issued by both Presidents may be found at:  
<https://www.gov.uk/employment-tribunals/legislation>

## The hearing

You will find the date, time and place of the hearing, and the estimated time it will take on the letter we sent to you. If you are not sure about where and when the hearing is to be held, please contact the tribunal office. You should arrive at the hearing centre at least 30 minutes before the hearing is due to start, making allowances for possible travel delays.

The claimant will be required to pay a hearing fee before the hearing can go ahead. We will tell the claimant how much he or she has pay, how to pay it, and when it should be paid.

If the claimant cannot afford to pay the fee they can make a help with fees application. If the fee is not paid by the date specified by the tribunal or a help with fees application is not granted, the claim will be dismissed without the opportunity of attending a hearing. If the fee is not paid by the date specified by the tribunal or a fee remission granted, the claim will be dismissed without the opportunity of attending a hearing.

Please see our fees booklets T435, T436 and EX160A for information on how much you might have to pay, which are available at - <http://hmctsformfinder.justice.gov.uk>

Copies of the leaflets are available in hard copy format from the Employment Tribunals Public Enquiry Line: England and Wales: **0300 123 1024**; Scotland: **0141 354 8574** Textphone: **+44 (0)1509 221564** if you would like a copy of this booklet in Braille or large print or from any local office.

## **Will my case be heard on the date given?**

We will try to deal with your case as quickly as possible but delays can happen, for example, because the case before yours takes longer than planned. We aim to deal with as many cases as possible during each day. This may mean some cases are 'unallocated' and will start as soon as there is a tribunal available. If it becomes clear that a tribunal cannot hear your case that day, we will tell you as soon as possible.

## **Can I ask for the hearing to be postponed?**

You must make a request for a postponement in writing as soon as possible giving full reasons for your request. You should also send a copy of your request to the other side so that they are aware of it and tell them to contact us as soon as possible if they object.

An Employment Judge will decide whether it is in the interests of justice to grant a postponement and they may want the views of the other side before reaching a decision. You should not assume that your request has been granted. We will inform you if it has.

If you or the other side (or somebody else acting for you or the other side) fails to appear at a hearing, the tribunal may decide the case in your or their absence.

## **What should I do if my case settles or I want to withdraw my claim?**

You should let us know immediately if your case settles before the hearing. The conciliation officer will let us know if your case is settled through Acas. If you are the claimant you must tell us in writing if you decide to withdraw either all or part of your claim. You must also tell the respondent that you are withdrawing your claim. You must do this as soon as possible. If you withdraw your claim then, it will be automatically dismissed except in some very limited circumstances where you ask that it should not be or the Tribunal considers

that dismissal would not be in the interests of justice. If the claim is dismissed you will not be able to make a further claim against the respondent which raises the same complaint.

We will not refund any fees that you have paid if you reach a settlement agreement.

If you want to settle with the respondent, you must decide the terms between you and the tribunal will not play a part. You should make sure that you discuss any fees paid as part of the agreement you reach.

If your claim settle through ACAS the claim will be removed from the list for hearing (if listed) and the case file will be destroyed in accordance with our destruction policy 12 months from the date of settlement.

## **What are the different types of hearing?**

**Preliminary hearings** – these may be held to manage the case including:

- clarifying the issues in the case;
- deciding what orders should be made about matters such as documents and witnesses; and
- deciding the date, time and length of the full hearing,

or held to

- decide whether the whole or part of the claim or response should be dismissed;
- decide questions of entitlement to bring or defend a claim;
- decide, if either side's case appears weak, whether a deposit needs to be paid, and if so, how much, before that side can continue.

The letter giving you the date of the hearing will state the matters to be decided at the preliminary hearing, whether all or part of the hearing will be held in private and whether the hearing will take place over the phone, by video link or with the parties present

Where the preliminary hearing is being held to decide whether the whole or part of the claim or response should be dismissed or to decide questions of entitlement to bring or defend a claim or whether a deposit needs to be paid by a party, it may be necessary for evidence to be given at such a hearing. You will need to decide which witnesses (if any) and evidence to bring, bearing in mind the specific matters which the tribunal will be considering at this stage.

**The final hearing** – This is the hearing that:

- decides whether the claim succeeds or fails and, if it succeeds,

- what remedy is appropriate.

The hearing may, depending on the nature of the claim, be conducted either by a full tribunal which includes an Employment Judge and two lay members or by an Employment Judge sitting alone. Please see the 'What will happen at the hearing?' section later in this booklet for full details of the procedure at the hearing.

## **Representation at the hearing**

Even if you have represented yourself or your own organisation up to the date of the hearing, it may be possible for you to arrange representation at the hearing itself.

You can contact one of the following sources for assistance although you must do this in good time.

- If you are a member, you can contact your union or employer organisation.
- You can contact free advice services such as a citizens' advice bureau or law centre.
- You can contact solicitors or other professional advisers. You may be able to get Legal Aid in Scotland.

## **Preparing for a hearing**

It can be useful to watch a hearing at a tribunal so you understand the procedure and what happens. You can do this by contacting any tribunal office and asking if there is a suitable hearing for you to observe.

## **What documents do I need for the hearing?**

You may have been ordered by the tribunal to disclose your documents to the other side. But even if you have not you must make sure that the other side has reasonable notice (at least seven days) of any documents which you plan to use at the hearing to support your case.

If you are relying on any documents, please bring them to the hearing in addition to your own copy, three copies if it is before an Employment Judge alone and five if it is before a full tribunal.

## **Can I bring witnesses to the hearing?**

You can bring witnesses to the hearing to give relevant evidence. Even if you have not been told to, it is helpful if you let the tribunal know beforehand how many witnesses you plan to bring. You may have been ordered by the tribunal to produce a written statement of

your own evidence and for your witnesses. Even if you have not you may wish to consider doing so. However, in Scotland you should not do so unless ordered by the tribunal.

It is very important that your witnesses attend the hearing to give evidence as the Tribunal will place very little weight on the statement of a witness who is not present. **It is your responsibility to make sure that your witnesses come to the hearing.**

## **Can the tribunal order a witness to come to the hearing?**

You may ask the tribunal to issue a witness order which will summon someone that you want to have at the hearing, even if they do not want to be there, provided the evidence they will give is relevant to your case. You must apply in writing well before the hearing.

If you do so you will need to tell the tribunal:

- the name and address of the witness;
- what the witness will say and how it will help your case; and
- why the witness is not willing to come to the hearing voluntarily.

## **What do I need to do about compensation and remedy?**

### **If you are the claimant,**

You will need to produce evidence to show that you are entitled to the amount you are claiming. In an unfair dismissal case or discrimination claim involving loss of employment, you must be able to show what steps you have taken to find new employment. If you do not provide this information, you may not only recover less than you might otherwise be entitled to, but, if a further hearing is needed as a result of your failure, an order for costs (in Scotland, known as 'expenses') could be made against you.

### **If you are the respondent,**

You should produce any evidence and submissions which relate to what the claimant is looking for if their claim is successful.

If the claimant succeeds in a complaint of unfair dismissal (or failing to allow a woman to return to work after pregnancy) the tribunal may consider ordering reinstatement or re-engagement. As a result you should be prepared to give evidence at the hearing as to:

- the availability of the job which the claimant held or of similar jobs;
- whether you would take the claimant back either in the old job or in a similar one; and
- your reasons if you say it would not be practical or possible to reinstate the claimant.

If the claimant has indicated in advance that they are seeking re-engagement or reinstatement

and you do not have the information available at the hearing so that an adjournment is required, you will probably be ordered to pay the costs caused by the adjournment.

You should also be prepared to give evidence at the hearing as to what you would consider to be appropriate compensation and how you arrive at your assessment.

If the claimant was a member of a pension scheme, you must bring the following information to the tribunal.

- Whether the scheme was a defined contributions or a final-salary scheme.
- If it was a final-salary scheme, what is the value of the deferred pension.
- The retirement age under the scheme.
- The amount of the employer's contribution to the scheme.

If you do not give the tribunal the necessary information, a further hearing may be needed which could lead to an order for costs being made against you.

## **What will happen at the hearing?**

When you arrive at the tribunal you should report to reception. Before the hearing a tribunal clerk will discuss with you the number of witnesses you have and collect any documents you may have brought for the tribunal. You should tell the clerk if you or any of your witnesses have any special needs or concerns. The Employment Judge will make sure that you take the steps described below in a calm and measured way. However, he or she may have to be firm in moving the case on to make sure that it proceeds at a pace which allows it to be dealt with within the time set aside. Under the tribunal rules, the tribunal has the power to timetable the case so that it is dealt with within a specific time frame. If this step is being considered it will be discussed with you. Generally in an unfair dismissal case the respondent will give evidence and call any witnesses first, while in a discrimination case the claimant will normally be first to give evidence followed by any witnesses. However, there is no absolute rule as to which side starts and this will be discussed with you before the hearing begins.

You and your witnesses will have to give evidence on oath or affirmation. If you lie after swearing an oath or affirmation you could be convicted of perjury. In England and Wales, if the parties have been ordered to exchange witness statements, these will stand as the witness's evidence and in most cases will not be read out in Tribunal. In Scotland witness statements are not normally used although they can be in some cases if ordered by a judge. You or your witnesses can be asked questions by the other side (this is called 'cross-examination'). You or

your witnesses can then give further evidence to clarify matters which came up when being asked questions by the other side ('re-examination'). Finally, the Employment Judge and members may also ask some questions which both parties can answer.

## A typical tribunal hearing

Tribunal Clerk

Lay Member

Employment Judge

Lay Member

Witness



Respondent's  
Representative

Respondent

Claimant's  
Representative

Public Gallery

Claimant

The same procedure is followed with all witnesses and parties. Once all the evidence has been heard, both sides can sum up before the tribunal retires to consider their judgment. Unless the tribunal 'reserves' its judgment, the Employment Judge will announce the judgment and the reasons for it at the end of the hearing. If the judgment is reserved you will receive it, and the reasons for it, in writing at a later date.

This may happen in complicated cases or if there is not enough time on the day of the hearing to come to and announce the judgment.

The tribunal will normally expect to deal with compensation issues at the hearing. The time set aside for the hearing will usually include time for this.

## What happens next?

Wherever possible you or your representative will be given a copy of the tribunal's judgment on the day of the hearing. If this is not possible you or your representative will be sent a copy of the written judgment as soon as possible after the hearing. You must abide by the Employment Tribunal judgment as it is legally binding.

Written reasons for the judgment will also be given if you ask for them at the hearing or make a written request within 14 days of the date that the judgment was sent to you.

## **Can I claim expenses?**

HM Courts and Tribunals Service does not, where the claim was made on or after 6 April 2012, meet the expenses or allowances of parties, witnesses and volunteer representatives attending an employment tribunal hearing of any type (other than where the person attending the hearing has been called by the tribunal to give medical evidence).

If the claim was made on, or before 5 April 2012, then a leaflet Expenses and allowances payable to parties and witnesses attending an Employment Tribunal is available at [http://hmctsformfinder.justice.gov.uk/HMCTS/getForms.do?court\\_forms\\_category=Employment%20Tribunal](http://hmctsformfinder.justice.gov.uk/HMCTS/getForms.do?court_forms_category=Employment%20Tribunal)

## **Disability or special needs**

If you or anyone coming to a tribunal with you has a disability or a particular need, you should contact the tribunal office dealing with your case to discuss the matter. Examples of the help we can provide include converting documents to Braille or larger print and paying for sign language interpreters. We can also provide hearing induction loops in the room where the hearing is held if you need them. Please contact us as soon as possible so that suitable arrangements can be made.



## Employment tribunal offices

<b>Aberdeen</b>	Mezzanine Floor, Atholl House, 84-88 Guild Street, Aberdeen AB11 6LT	<b>t.</b> 01224 593137 <b>e.</b> aberdeenet@hmcts.gsi.gov.uk
<b>Bristol</b>	Bristol Civil and Family Justice Centre, 2 Redcliff Street, Bristol BS1 6GR	<b>t.</b> 0117 929 8261 <b>e.</b> bristolet@hmcts.gsi.gov.uk
<b>Cardiff</b>	2nd Floor, Caradog House, 1-6 St Andrews Place, Cardiff CF10 3BE	<b>t.</b> 029 2067 8100 <b>e.</b> cardiffet@hmcts.gsi.gov.uk
<b>Dundee</b>	Ground Floor, Block C, Caledonian House, Greenmarket, Dundee DD1 4QB	<b>t.</b> 01382 221578 <b>e.</b> dundeeet@hmcts.gsi.gov.uk
<b>East London</b>	2nd Floor, Anchorage House, 2 Clove Crescent, London E14 2BE	<b>t.</b> 020 7538 6161 <b>e.</b> eastlondon@hmcts.gsi.gov.uk
<b>Edinburgh</b>	54-56 Melville Street, Edinburgh EH3 7HF	<b>t.</b> 0131 226 5584 <b>e.</b> edinburghet@hmcts.gsi.gov.uk
<b>Glasgow</b>	Eagle Building, 215 Bothwell Street, Glasgow G2 7TS	<b>t.</b> 0141 204 0730 <b>e.</b> glasgowet@hmcts.gsi.gov.uk
<b>Huntingdon</b>	Huntingdon Law Courts, Walden Road, Huntingdon PE29 3DW	<b>t.</b> 01480 415600 <b>e.</b> huntingdonet@hmcts.gsi.gov.uk
<b>Leeds</b>	4th Floor, City Exchange, 11 Albion Street, Leeds LS1 5ES	<b>t.</b> 0113 245 9741 <b>e.</b> leedset@hmcts.gsi.gov.uk
<b>London Central</b>	Victory House, 30-34 Kingsway, London WC2B 6EX	<b>t.</b> 020 7273 8603 <b>e.</b> londoncentralet@hmcts.gsi.gov.uk
<b>London South</b>	Montague Court, 101 London Road, West Croydon CR0 2RF	<b>t.</b> 020 8667 9131 <b>e.</b> londonsouthet@hmcts.gsi.gov.uk
<b>Manchester</b>	Alexandra House, 14-22 The Parsonage, Manchester M3 2JA	<b>t.</b> 0161 833 6100 <b>e.</b> manchesteret@hmcts.gsi.gov.uk
<b>Midlands (East)</b>	Nottingham Justice Centre Carrington Street, Nottingham NG2 1EE	<b>t.</b> 0115 947 5701 <b>e.</b> midlandseastet@hmcts.gsi.gov.uk
<b>Midlands (West)</b>	Centre City Tower, 7 Hill Street, Birmingham B5 4UU	<b>t.</b> 0121 600 7780 <b>e.</b> midlandswestet@hmcts.gsi.gov.uk
<b>Newcastle</b>	Kings Court, Earl Grey Way, Royal Quays, North Shields, Tyne & Wear, NE29 6AR	<b>t.</b> 0191 260 6900 <b>e.</b> newcastleet@hmcts.gsi.gov.uk
<b>Watford</b>	3rd Floor, Radius House, 51 Clarendon Rd, Watford WD17 1HP	<b>t.</b> 01923 281 750 <b>e.</b> watfordet@hmcts.gsi.gov.uk

Our offices are open from 9.00am to 5.00pm Monday to Friday.

We will direct you to a map showing the location of the office where the hearing has been arranged and giving details of local car parking and facilities for refreshments and phones.

Public Enquiry Line: England and Wales: **0300 123 1024**; Scotland: **0141 354 8574**

Textphone: **+44 (0)1509 221564**